

the failure and whether the reasons for the failure were increases in the unemployment rate in the TFAG service area and changes in TFAG caseload size during the fiscal year in question; and

(4) If a Tribe fails to repay a Federal loan provided under section 406 of the Act, we will reduce the TFAG for the following fiscal year by an amount equal to the outstanding loan amount plus interest.

(b) In calculating the amount of the penalty, we will add together all applicable penalty percentages, and the total is applied to the amount of the TFAG that would have been payable if no penalties were assessed against the Tribe. As a final step, we will subtract other (non-percentage) penalty amounts.

(c) When imposing the penalties in paragraph (a) of this section, we will not reduce an affected Tribe's grant by more than 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a Tribe during a fiscal year, we will apply the remaining amount of the penalty to the TFAG payable for the immediately succeeding fiscal year.

(1) If we reduce the TFAG payable to a Tribe for a fiscal year because of penalties that have been imposed, the Tribe must expend additional Tribal funds to replace any such reduction. The Tribe must document compliance with this provision on its TANF expenditure report.

(2) We will impose a penalty of not more than 2 percent of the amount of the TFAG on a Tribe that fails to expend additional Tribal funds to replace amounts deducted from the TFAG due to penalties. We will apply this penalty to the TFAG payable for the next succeeding fiscal year, and this penalty cannot be excused (see § 286.235).

(d) If a Tribe retrocedes the program, the Tribe will be liable for any penalties incurred for the period the program was in operation.

§ 286.200 How will we determine if Tribal Family Assistance Grant funds were misused or intentionally misused?

(a) We will use the single audit or Federal review or audit to determine if

a Tribe should be penalized for misusing Tribal Family Assistance Grant funds under § 286.195(a)(1) or intentionally misusing Tribal Family Assistance Grant funds under § 286.195(a)(2).

(b) If a Tribe uses the TFAG in violation of the provisions of the Act, the provisions of 45 CFR part 92, OMB Circulars A-87 and A-133, or any Federal statutes and regulations applicable to the TANF program, we will consider the funds to have been misused.

(c) The Tribe must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 286.35) and the provisions listed in § 286.45.

(d) We will consider the TFAG to have been intentionally misused under the following conditions:

(1) There is supporting documentation, such as Federal guidance or policy instructions, indicating that TANF funds could not be used for that purpose; or

(2) After notification that we have determined such use to be improper, the Tribe continues to use the funds in the same or similarly improper manner.

(e) If the single audit determines that a Tribe misused Federal funds in applying the negotiated time limit provisions under § 286.115, the amount of the penalty for misuse will be limited to five percent of the TFAG amount.

(1) This penalty shall be in addition to the reduction specified under § 286.195(a)(1).

(2) [Reserved]

§ 286.205 How will we determine if a Tribe fails to meet the minimum work participation rate(s)?

(a) We will use the Tribal TANF Data Reports required under § 286.255 to determine if we will assess the penalty under § 286.195(a)(3) for failure to meet the minimum participation rate(s) established for the Tribe.

(b) Each Tribal TANF Grantee's quarterly reports (the TANF Data Report and the Tribal TANF Financial Report) must be complete and accurate and filed by the due date. The accuracy